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Security Council

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Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 10 April 2002 (S/2002/395).

The Counter-Terrorism Committee has received the attached supplementary report from Australia, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present latter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant
to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 24 June 2002 from the Permanent Representative of Australia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I refer to your letter of 1 April 2002, in which you sought information on a number of points arising from the first report of Australia to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001). You will find attached a supplement to Australia's first report responding to each of the matters raised in your letter (see enclosure).

Australia's first report highlighted significant changes to Australia's legal framework in relation to preventing, suppressing and prosecuting terrorism that would be put to the Australian Parliament when it resumed in 2002. These changes, contained within the Security Legislation Amendment (Terrorism) Bill 2002, the Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002, the Suppression of the Financing of Terrorism Bill 2002, the Border Security Legislation Amendment Bill 2002 and the Telecommunications Interception Legislation Amendment Bill 2002, were introduced to Parliament in March 2002. Since then, they have been the subject of extensive and considered deliberation by the Senate Legal and Constitutional Affairs Committee and discussions within the Government, and modifications to the legislative package in response to these consultations were introduced in Parliament earlier this month.

When these Bills become law, Australia will submit a revised report to the Counter-Terrorism Committee, consolidating the full range of changes arising from the new legislation, as well as the information contained in this supplement.

(*Signed*) John **Dauth**

Enclosure

Supplement to first report of Australia to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001

Sub-paragraph 1(a):

Could Australia please clarify whether the existing provisions in the laws and regulations referred to in the report in relation to this sub-paragraph can readily be extended to persons identified by other countries as supporters of terrorism.

1. The measures described in paragraphs 2 and 3 of the Australian report (under the *Banking (Foreign Exchange) Regulations* and under the *Financial Transactions Reports Act 1988*) that were taken in relation to persons and entities identified in US Executive Order 13224 could have been taken in relation to names provided by other countries. The measures under the *Banking (Foreign Exchange) Regulations* were superseded by the *Charter of the United Nations (Anti-terrorism Measures) Regulations* referred to in paragraphs 7 and 9 of Australia's report. The Gazettal procedure provided for in the Regulations to identify the persons and entities (and assets) to which the Regulations are to apply also allows persons identified by other countries as supporters of terrorism to be subjected to the Regulations.

Are natural or legal persons (eg attorneys, notaries and other intermediaries) required to report suspicious transactions to the public authorities and, if so, what penalties apply if such persons omit to report, either wilfully or by negligence?

2. As mentioned in paragraph 3 of Australia's report, any cash dealer that has reasonable grounds to suspect that information concerning a transaction, or an attempted transaction, may be relevant to the investigation of a breach of a law in Australia, must make a report to the Director of the Australian Transaction Reports and Analysis Centre (AUSTRAC). The definition of cash dealer is given in paragraph 4 of Australia's report. It can include natural and legal persons. In addition, under the *Financial Transactions and Reports Act 1988* solicitors, solicitor corporations, or partnerships of solicitors must report to the Director of AUSTRAC significant cash transaction entered into by them or on their behalf in the course of their legal practice (section 15A).

3. Refusal or failure of a natural or legal person obliged to report transactions under the Act to make such a report is an offence. The maximum penalty for the offence in the case of a natural person is 2 years imprisonment and / or a maximum fine of 120 penalty units (for the value of a penalty unit, see section 4AA of the *Crimes Act 1914*. The present value of a penalty unit is A$110). The maximum penalty in the case of a legal person is 600 penalty units (section 28).

4. The Act also makes it an offence to intentionally make false or misleading statements (including through omission) in relation to reporting, accountancy and transaction obligations under the Act. The maximum penalty for the offence in the case of a natural person is 5 years imprisonment and / or a maximum fine of 300 penalty units. The maximum penalty in the case

of a legal person is 1500 penalty units (section 29). Conducting transactions deliberately so as to avoid reporting requirements is an offence punishable by the same penalty (section 31).

5. Knowingly making an incomplete report of a transaction that must be made under the Act, or knowingly keeping incomplete records that must be kept under the Act, is also an offence, attracting a maximum penalty of 10 penalty units in the case of a natural person or 50 penalty units in the case of a legal person (section 30).

How are the federal laws relating to anti-terrorism enforced by the States and Territories and how is coordination amongst the implementing agencies of the States and Territories achieved?

6. Australia's nation-wide counter-terrorist capability and preparedness is coordinated through the Standing Advisory Committee on Commonwealth/State Cooperation for Protection Against Violence (SAC-PAV). Following the Prime Minister's Summit on Terrorism and Transnational Crime in April 2002 (see paragraphs 35-36 below), the SAC-PAV is to be renamed the National Counter-Terrorism Committee with a broader mandate to include consequence management. The SAC-PAV administers the National Anti-Terrorist Plan which provides cooperative arrangements for all Australian governments to prevent, respond, investigate and manage the consequences of terrorism.

7. The major purpose of the SAC-PAV is to propose to heads of government in Australia steps to ensure nation-wide readiness and cooperation between relevant Federal and State and Territory Government security, law enforcement and intelligence agencies for the protection of Australia from terrorism. Standing and ad hoc sub-committees, project, and working groups are established by the SAC-PAV to develop and manage specific aspects of the national counter-terrorist capability and arrangements.

8. The SAC-PAV comprises senior Federal and State/Territory departmental officials and police officers. It normally meets twice per year, unless special circumstances make additional meetings necessary. The Protective Security Coordination Centre in the Federal Attorney-General's Department is responsible for managing the SAC-PAV program.

Sub-paragraph 1(c):

Please clarify whether the Charter of the UN (Anti-terrorism Measures) Regulations permit the freezing, at the request of another country, of the assets of persons who may be supporting terrorism in that other country. Does the definition of "asset" cover economic resources and related services?

9. As mentioned in paragraph 1 above, the Gazettal procedure provided for in the Charter of the United Nations (Anti-terrorism Measures) Regulations to identify the persons and entities (and assets) to which the Regulations are to apply permits the freezing, at the request of another country, of the assets of persons who may be supporting terrorism in that other country.

10. The Regulations (Regulation 6) define "asset" to include (but not be limited to) the following:

(a) funds;
(b) financial assets;
(c) tangible and intangible assets;
(d) property rights;
(e) publicly and privately traded securities;
(f) publicly and privately traded debt instruments;
(g) income from, or proceeds from the sale of, assets mentioned in paragraphs (a) to (f).

11. It is the view of the Australian Government that "economic resources and related services" would fall within the meaning of "asset" in the Regulations.

Sub-paragraph 1(d):

Does Australia have any system for the regulation or control of alternative money transfer arrangements such as the "Hawalah" system?

12. Alternative money transfer businesses must comply with requirement of the *Financial Transaction Reports Act 1988*, including filing of suspicious transaction reports, significant transaction reports and international funds transfer instruction reports. Australia has a "High Risk Cash Dealer" program, administered by AUSTRAC, that seeks to identify high risk cash dealers, to educate such dealers with respect to their reporting and identification obligations and to take compliance action where necessary. Alternative money transfer businesses are defined as cash dealers under the *Financial Transaction Reports Act 1988* and are included in this program.

How does the financial tracking system ensure that funds received by charitable and similar associations are not diverted from the associations' stated purpose to terrorist activities?

13. In order for charitable institutions and similar associations to effectively conduct their activities and maximise their income, they may choose to formalise their association at law and apply for tax concessions of various types. In both cases, Federal and State laws require entities to register, provide identification credentials and meet qualification requirements.

14. All customer based International Funds Transfer Instructions (wire transfers) are reportable to AUSTRAC. These transactions along with other reportable transactions are stored on a single database (over 50 million reports). Activity is monitored using special software to isolate anomalous transactions, groups of transactions and related networks. Unusual financial activity is communicated to law enforcement and revenue agencies for investigation. There is no onsite inspection of records held by charitable organisations.

15. The Suppression of the Financing of Terrorism Bill 2002 will create a crime of providing or collecting funds to facilitate a terrorist act. Furthermore, the *Financial Transaction Reports Act 1988* requires that cash dealers report all transactions over $10,000 as well as suspicious transactions, and fraud is a crime under the Federal Criminal Code.

Sub-paragraph 2(e)

Are the relevant provisions of the Criminal Code applicable in all of the following circumstances:

(a) acts committed outside Australia by a person who is a citizen of, or habitually resident in, Australia (whether that person is currently present in Australia or not);

(b) acts committed outside Australia by a foreign national who is currently in Australia?

16. The amendments to the *Criminal Code Act 1995* referred to in paragraph 44 of Australia's report and to which this question relates were introduced in Parliament in March 2002. The majority of the proposed new terrorist offences that will be created once the amendments are adopted by Parliament would apply in both circumstances (a) and (b). Specifically, the offences relating to terrorist acts (including engaging in a terrorist act and related offences such as providing or receiving training connected with terrorist acts and directing organisations concerned with terrorist acts) and the financing of terrorism will apply both to acts committed outside Australia by an Australian citizen or resident and acts committed outside Australia by a foreign national who is currently in Australia. If a person who is not an Australian citizen commits a terrorist or terrorist financing offence in a foreign country, a prosecution for that offence must not be commenced without the Attorney-General's consent. This enables the Attorney-General to have regard to certain considerations with international law implications before deciding whether a prosecution should be commenced, such as current international law, practice and comity, international relations and prosecution action that is being or that might be taken in another country.

17. The proposed offences relating to terrorist bombings will apply in the circumstances outlined in (a). Specifically, the offences will apply if committed outside Australia:

- by a person who is a citizen of Australia; or
- by a stateless person who is habitually resident in Australia.

18. The offences will also apply in the circumstances outlined in (b), that is, if committed outside Australia by a foreign national who is currently in Australia, but only if the offence is committed:

- against an Australian citizen or corporation;
- against an Australian government facility located outside Australia;
- with the intention of compelling an Australian legislative, executive or judicial institution to do or omit to do an act; or
- if the relevant conduct is subject to the jurisdiction of another State Party to the Convention for the Suppression of Terrorist Bombings established in accordance with Article 6 paragraphs 1 or 2, and the person is in Australia.

19. No prosecution for a terrorist bombings offence can be commenced without the Attorney-General's consent. To issue this consent, the Attorney-General must have regard to the scope and terms of the Convention for the Suppression of Terrorist Bombings, as well as whether an offence has occurred or a prosecution has or will be commenced under the law of an Australian State or Territory.

Sub-paragraph 2(f)

The report states that the Mutual Assistance in Criminal Matters Act 1987 applies subject to any mutual assistance treaty between Australia and another country, and to any multilateral assistance treaty to which both are parties. In the absence of a relevant treaty, does the Act permit assistance to a country in case of need? In this context, an explanation of the expression "other forms of international assistance" would be of assistance.

20. The absence of a treaty does not prevent Australia making or granting a request for mutual assistance under the *Mutual Assistance in Criminal Matters Act*. Reference to "other forms of international assistance" includes requests for non-coercive measures such as taking voluntary statements or serving criminal process.

Sub-paragraph 2(g)

Could Australia please provide the CTC with information on the mechanism for inter-agency coordination between the authorities responsible for narcotics control, financial tracking, border control and security with particular regard to the border controls preventing the movement of terrorists. Is the Taskforce also responsible for this coordination?

Heads of Commonwealth Operational Law Enforcement Agencies

21. At the policy level, the Heads of Commonwealth Operational Law Enforcement Agencies (HOCOLEA), formed in 1989, facilitates cooperation and coordination between Australia's law enforcement and revenue agencies at the highest levels. HOCOLEA was endorsed by the Federal Government as the primary consultative mechanism for law enforcement policy issues extending beyond the responsibilities of the Federal Attorney-General's portfolio.

22. HOCOLEA membership is drawn from the Attorney-General's Department, Australian Competition and Consumer Commission, Australian Customs Service, Australian Federal Police, Australian Securities and Investments Commission, Australian Prudential and Regulatory Authority, Australian Taxation Office, Australian Transaction Reports and Analysis Centre, Department of Immigration, Multicultural and Indigenous Affairs, Commonwealth Director of Public Prosecutions and the National Crime Authority.

23. HOCOLEA has sought to address key emerging law enforcement and regulatory challenges through the creation of inter-agency working groups. Two such groups are the Identity Fraud Working Group and the Action Group into the Law Enforcement Implications of Electronic Commerce.

24. At the operational level agencies that have responsibility for issues such as narcotics control, financial tracking, border control and security (ie. the Australian Federal Police, the Australian Customs Services, the National Crime Authority, Australian Transaction Reports and Analysis Centre) work closely together both informally and through major task forces.

National Crime Authority Agio Task Force

25. This task force comprises the National Crime Authority, the Australian Customs Service, the Australian Federal Police, the Australian Securities and Investment Commission, the Australian Tax Office, the Australian Bureau of Criminal Intelligence and the Australian Transaction and Reports Analysis Centre (AUSTRAC). It analyses and value adds to matters identified through AUSTRAC's automated monitoring of the AUSTRAC financial database. The task force arrangements under the *National Crime Authority Act* provides a legislative basis for sharing intelligence holdings of each agency to develop unusual and suspicious patterns of financial activity to a level of operational interest. Matters are then disseminated to law enforcement or security agencies for investigation. This task force provides an effective mechanism for the coordination of target development and ultimate investigation of criminal matters.

Australasian Police Ministers Council (APMC)

26. The Australasian Police Ministers' Council (APMC), established in 1980, is a consultative body that meets twice a year to promote a coordinated national response to law enforcement issues and to maximise the efficient use of police resources. Special meetings on subjects of high sensitivity and/or urgency are called as required. The Council comprises the Australian State and Territory Police Ministers, the Federal Minister for Justice and Customs and the New Zealand Police Minister.

27. The initial role of the APMC was to establish the National Common Police Services (Australian Bureau of Criminal Intelligence, Australian Institute of Police Management, Australasian Centre for Policing Research, National Crime Statistics Unit, National Institute of Forensic Science) and to develop a coordinated approach to policing policy and operations. Since its establishment, the APMC has broadened its role to include the coordination of the national response to organised crime and the cooperative efforts needed to achieve that goal. The APMC will be considering a range of law enforcement issues, including implementation of the outcomes of the Prime Minister's Summit on Terrorism and Transnational Crime (see paragraphs 35-38 below), at its upcoming meeting in July 2002.

Office of Strategic Crime Assessments (OSCA)

28. The Office of Strategic Assessments (OSCA) supports the strategic decision-making of the Minister for Justice and Customs and Federal law enforcement agencies through the provision of strategic assessments of emerging threats and opportunities which are likely to impact on Australia. These assessments have a five year time horizon and incorporate a whole of government perspective. Currently within the Federal Attorney-General's Department, OSCA

will become part of the Australian Crime Commission (see paragraph 37 below) when it is established.

Sub-paragraph 3(d)

What are the intentions of Australia in regard to ratifying the Convention on the Marking of Plastic Explosives for the Purpose of Detection 1991?

29. The Australian Government is reviewing its position on the Convention on the Marking of Plastic Explosives for the Purpose of Detection 1991.

Please provide a report on the progress made with the ratification and implementation of the International Convention for the Suppression of the Financing of Terrorism and the International Convention for the Suppression of Terrorist Bombings.

30. Australia's ratification of the International Convention for the Suppression of the Financing of Terrorism and accession to the International Convention for the Suppression of Terrorist Bombings is subject to completion of the following domestic requirements:

- passage of implementing legislation;
- tabling of the text of the Conventions in both Houses of Parliament for a period of 15 Parliamentary sitting days;
- the tabling of a report into each Convention by the Parliament's Joint Standing Committee on Treaties; and
- approval of the Governor-General in Council to the ratification and accession to the Conventions.

31. On 12 March 2002, the Australian Government introduced the necessary implementing legislation in Parliament: the Criminal Code Amendment (Suppression of Terrorist Bombings) Bill and the Suppression of the Financing of Terrorism Bill. The Bills were referred to the Senate's Legal and Constitutional Committee on 15 March, which recommended on 8 May 2002 only minor amendments to the Suppression of the Financing of Terrorism Bill and no amendments to the Criminal Code Amendment (Suppression of Terrorist Bombings) Bill. The Government tabled amendments to the Suppression of the Financing of Terrorism Bill on 20 June. Both Bills are expected to be passed by Parliament by the end of June 2002.

32. The text of the International Convention for the Suppression of Terrorist Bombings was tabled in both houses of Parliament on 12 March 2002. Fifteen sitting days from this date is 25 June 2002. The Joint Standing Committee on Treaties tabled its report in relation to the Convention on 24 June 2002, recommending that Australia accede to the Convention. Subject to successful passage of the implementing legislation, Australia is therefore likely to accede to the International Convention for the Suppression of Terrorist Bombings in July 2002.

33. The text of the International Convention for the Suppression of the Financing of Terrorism was tabled in both houses of Parliament on 18 June 2002. Fifteen sitting days from this date is 29 August 2002. Subject to the report of the Joint Standing Committee on Treaties and to successful passage of the implementing legislation, Australia is likely to ratify the International Convention for the Suppression of the Financing of Terrorism in September 2002.

Paragraph 4

Has Australia addressed any of the concerns expressed in paragraph 4 of the Resolution?

34. Since Australia's report, Australia has participated in several initiatives undertaken to enhance national, regional and international coordination of effort in response to terrorism and other trans-national criminal activity.

National Level

35. On 5 April 2002 the Prime Minister convened a Summit on Terrorism and Transnational Crime. The Summit was attended by the Premiers of the States and the Chief Ministers of the self governing Territories and agreed on 20 initiatives to enhance the framework for dealing with Terrorism and Transnational Crime at the national level under Australia's federal system.

36. In relation to terrorism, the Summit agreed that:

- the Federal Government would have clear responsibility for "national terrorist situations", including attacks on Federal Government targets, attacks across jurisdictions, threats against civil aviation and those involving chemical, biological, radiological and nuclear materials;

- the Australian States and Territories would take whatever action was necessary to ensure that terrorists could be prosecuted under their criminal law and that the States would refer sufficient power to the Federal Government to enable it to enact comprehensive anti-terrorism laws. (This referral of power from one level of government to another is necessary under Australia's Constitution to provide the Federal Government with plenary power to enact such laws);

- all jurisdictions would review their legislation and counter-terrorism arrangements to make sure that they are appropriate to meet the new terrorist environment;

- the existing Standing Advisory Committee on Commonwealth/State Cooperation for Protection Against Violence (SAC-PAV) would be reconstituted as the National Counter-Terrorism Committee, with a broader mandate to cover prevention and consequence management issues.

37. In relation to organised crime, the Summit agreed:

- to replace the National Crime Authority (NCA) with an Australian Crime Commission (ACC) that built on the important features of the NCA for effective national law enforcement

operation in partnerships with Australian State and Territory police forces. (The ACC will come into operation by 31 December 2002);

- that the ACC would be focussed on criminal intelligence collection and establishment of national intelligence priorities, with access to taskforce investigative capability to give effect to its intelligence functions and to support its overall operations.

38. In relation to arrangements for dealing with multi-jurisdictional crime, leaders agreed to a number of significant reforms, including a possible reference of power in relation to money-laundering, which would permit the Federal Government to enact more comprehensive money laundering laws.

Regional Level

Australian Federal Police Law Enforcement Cooperation Program (LECP)

39. The Australian Federal Police's (AFP) Law Enforcement Cooperation Program (LECP) plays a critical role in international cooperation with law enforcement agencies. Officers in the network form the link between countries, facilitating the exchange of information as well as enhancing communication and understanding by attending international conferences and seminars, promoting the LECP and building a rapport with law enforcement officers of their host country.

40. The goals of the LECP include:

- strengthening the capability of overseas law enforcement agencies to gather information and evidence against illicit drug traffickers through education and training programs for the practitioner and modest provision of equipment;

- developing a greater capacity to meet Australia's international priorities by being able to more effectively gather international law enforcement intelligence to support AFP operations;

- improving law enforcement infrastructure of specified countries within program and operational understanding of international crime; and

- fostering closer personal and institutional linkages.

Pacific Islands Forum (PIF)

41. The PIF represents the Heads of Government of all the independent and self-governing Pacific Island countries, including Australia. It provides member nations with the opportunity to express their joint political views and to co-operate in areas of political and economic concern. There are 16 members. On 26 September 2001 the Chairman of the Forum, HE Rene Harris, issued a Press Statement condemning international terrorism and reaffirming the PIF's support for international co-operation aimed at the eradication of international terrorism.

Forum Regional Security Committee (FRSC)

42. The FRSC is the mechanism through which the PIF co-ordinates regional law enforcement initiatives and disseminates information to facilitate contact and co-operation among specialist agencies, as well as to provide advice to Forum Leaders on law enforcement issues. The FRSC met from 12 to 14 June 2002. It discussed the outcomes of the US-sponsored counter terrorism workshop held in Hawaii in March 2002 and reaffirmed the commitment of its members to further develop regional initiatives to counter terrorism.

43. In particular, the FRSC identified and discussed the linkages between the requirements of United Nations Security Council Resolution 1373 and the Forum's Honiara Declaration on Law Enforcement Co-operation (see paragraph 45 below). A draft Suva Declaration on Law Enforcement Co-operation will be submitted to the next Pacific Islands Forum meeting to be held in August 2002. In the meantime an expert FRSC group, including Australia, has been formed to further develop the initiatives, including extradition legislation, mutual assistance in criminal matters legislation, proceeds of crime legislation and money laundering legislation.

Pacific Islands Law Officers' Meeting (PILOM)

44. PILOM is an annual meeting of senior legal and policy advisers to governments in the South Pacific. It works closely with the Forum Secretariat and other Pacific Island Forum bodies (such as the FRSC) to address legal and legislative issues which are referred by the Forum or which are identified as a common concern. Under the Honiara Declaration on Law Enforcement Co-operation, PILOM works with the Forum Secretariat to provide and review draft legislation to jurisdictions in the areas of extradition, mutual assistance in criminal matters, forfeiture of the proceeds of crime, money laundering and drugs.

45. The Honiara Declaration addressed terrorism in the following terms:

> "The Forum recognised terrorism as a threat to the political and economic security of the region, and noted the various international conventions in the field. It identified areas of possible cooperation amongst Forum governments, particularly in intelligence gathering, training of personnel and joint exercises in dealing with serious incidents. While recognising the primary role of other networks, particularly police, in addressing this area, the Forum agreed that Forum programmes, particularly in the civil aviation area, should continue to take account of terrorism concerns."

46. The next PILOM will be held from 15 to 17 October 2002 in Samoa. Australia understands that the development of appropriate legislative responses to terrorism will be on the agenda.

South Pacific Chiefs of Police Conference (SPCPC)

47. The SPCPC is an annual meeting of regional Chiefs of Police organisations. The organisation comprises 21 members. Among the many operational issues being considered by

the SPCPC are the suppression of terrorism, increased co-operation and exchange of information between regional police forces, implementation of Resolution 1373 and the UN Convention Against Transnational Organised Crime, input to the development of regional model drugs legislation and the development of Combined Law Agency Groups to address operational issues of common concern. The SPCPC works closely with customs and immigration administrations in the South Pacific region.

Oceania Customs Organisation (OCO)

48. OCO brings together 23 customs administrations covering Australasia, Melanesia, Micronesia and Polynesia to discuss customs issues of common concern. OCO held its annual conference from 8 to 12 April 2002 at the Wallis and Futuna islands. OCO has produced discussion papers and communiqués on the customs aspects of law enforcement to implement Resolution 1373 and the UN Convention Against Transnational Organised Crime. These papers are being used to set the OCO Strategic Plan for 2002-2004. OCO works closely with the Pacific Immigration Directors Conference (see paragraph 49 below) to support efforts to establish intelligence infrastructures in their administrations.

Pacific Immigration Directors Conference (PIDC)

49. The PIDC provides an opportunity for senior officials in South Pacific immigration administrations to discuss the immigration aspects of law enforcement activities in the region. The PIDC formed a working group on terrorism in February 2002. The working group is considering a framework to comply with Resolution 1373 in the context of immigration issues, as well as an immigration compliance framework for the UN Convention Against Transnational Organised Crime. The PIDC is also assisting members to review and address their immigration legislation with particular regard to security related concerns such as people smuggling, illegal migration and terrorism.

Regional Weapons Control legislation

50. An OCO/SPCPC subcommittee has examined a common approach to weapons control in the South Pacific region. Under the "Nadi Framework", a draft model Bill on Weapons Control was produced at the 2001 meeting of the FRSC. The Law and Order Committee of FILOM provided the Forum Secretariat with suggested amendments to improve the draft model legislation. This exercise is expected to be completed during 2002-2003. Australia sees this as a continuing priority, in order to deprive potential terrorists of access to weapons in the region.

ASEAN Regional Forum

51. Australia and Thailand co-chaired an ASEAN Regional Forum (ARF) Workshop on Prevention of Terrorism in Bangkok from 17 to 19 April 2002. The meeting was attended by all 23 ARF participating States. The Workshop succeeded in its main goal of enabling participants to gain a greater understanding of practical measures required to prevent terrorist activity. Discussion focused on border controls, security for major international events and aviation

security. The Workshop produced a set of practical recommendations for further and better sharing of information among ARF member States.

52. Australia also participated in an ARF Workshop on Financial Measures against Terrorism in Honolulu from 25 to 27 March 2002. The Workshop, co-chaired by the United States and Malaysia, was attended by 21 of 23 ARF members. It produced a draft ARF Statement on Terrorist Financing that will be submitted to the ARF Ministerial Meeting in Brunei on 31 July 2002.

International Level

The Commonwealth

53. At the Commonwealth Heads of Government Meeting (CHOGM), held in Australia from 2 to 5 March 2002, Commonwealth Heads of Government issued the Coolum Communiqué to endorse the Commonwealth Plan of Action to combat terrorism. The Plan of Action includes provision of legal assistance and capacity building to implement Resolution 1373, other measures to increase law enforcement co-operation and measures to combat money laundering and the financing of terrorism.

54. Arising from the Senior Officials of Law Ministries Meeting in November 2001, the Commonwealth Secretariat has prepared a paper concerning issues which Commonwealth jurisdictions can use to address UN Security Council Resolutions on terrorism.

55. The Commonwealth Law Ministers Meeting will be held in St Vincent and The Grenadines from 18 to 22 November 2002. Matters to be discussed include a review of the Commonwealth extradition and mutual assistance schemes to increase their applicability to terrorism and legal assistance to members to ratify and implement the UN counter-terrorism instruments.

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Security Council

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Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/458).

The Counter-Terrorism Committee has received the attached supplementary report from Morocco, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant
to resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: French]

Note verbale dated 10 July 2002 from the Permanent Mission of Morocco to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of Morocco to the United Nations presents its compliments to the Security Council Committee established pursuant to resolution 1373 (2001) and has the honour to transmit to it herewith Morocco's supplementary report on the implementation of Security Council resolution 1373 (2001) (see enclosure).

The Permanent Mission of Morocco to the United Nations takes this opportunity to convey to the Counter-Terrorism Committee the renewed assurances of its highest consideration.

Enclosure

Response to the Counter-Terrorism Committee's questionnaire concerning the report on the measures taken by the Government of Morocco in implementation of Security Council resolution 1373 (2001) concerning counter-terrorism

Subparagraph 1 (a)

The Ministry of the Economy, Finance, Privatization and Tourism has requested banks and financial establishments to prevent movements of funds intended for terrorist purposes. Please inform the Committee whether there is a legal or regulatory basis for this request.

The request to banks by the Ministry of the Economy, Finance, Privatization and Tourism to prevent movements of funds intended for the financing of terrorism was formulated pursuant to the provisions of article 1 of the Dahir of 10 September 1939 which prohibits the export of capital without authorization by the Minister responsible for finance.

How are banks and financial establishments expected to respond to this request?

By virtue of the powers conferred on it by Dahir No. 1-93-147 of 6 July 1993, the Central Bank, in circular G6 of 19 February 2001, introduced an obligation for credit establishments to equip themselves with an internal control system. Article 70 of the circular requires credit establishments to take all precautions and appropriate measures to avoid the occurrence of any event that might involve them in illegal operations, blemish their reputation or impair the repute of the profession.

Which acts constitute, in Moroccan practice, a suspicious movement of funds in the context of subparagraph 1 (a) of the resolution?

There are no specific criteria for determining the suspect nature of a movement of funds. However, the banks have control mechanisms which enable them to monitor the operations or transactions made and to verify the internal procedures relating inter alia to the opening and identification of accounts, the monitoring of transactions and the amounts concerned (general inspection, internal and external audits, formalized data-processing tools). In addition, it should be pointed out that some banks have instituted specific mechanisms for combating capital laundering based on knowledge of the clients, monitoring of operations and detection of suspect operations.

Are the circular letters from the Exchange Office legally binding?

Paragraph 1 of the Dahir of 10 September 1939 provided that the Minister responsible for finance may delegate his powers with respect to the granting of authorizations for the export of capital. These powers were delegated to the Exchange Office by article 1 of Dahir No. 1-58-021 of 22 January 1958 concerning the Exchange Office. Consequently, the circulars of the Exchange Office are legally enforceable.

In view of the efforts of the international community to stop the abuse of informal banking networks (such as hawala), please comment on how this is or has been reflected by Moroccan legislation.

There are no informal banking networks in Morocco, given that all banks are approved by decree of the Minister responsible for finance, pursuant to the provisions of article 21 of Dahir No. 1-93-147 of 6 July 1993 on the exercise of the activity of credit establishments and their control. Moreover, it should be pointed out that articles 80 and 81 of the above Dahir provide for criminal penalties against any person engaging in banking or activities without authorization.

Subparagraph 1 (b)

Please clarify whether article 295 of the Moroccan Penal Code, which deals with aiding and abetting criminals, is the only legal basis for punishment of the acts listed in paragraph 1 (b) of the resolution.

Article 295 of the Moroccan Penal Code is not the only source for the punishment of the acts listed in paragraph 1 (b) of resolution 1373. Although this article deals exhaustively with the issue of all forms of assistance to criminals, it also applies to assistance that may be provided to terrorists in the perpetration of their acts. Other articles of the Penal Code also relate to aiding and abetting criminals. Mention may be made among others of:

Article 297, which deals with harbouring wanted criminals, attempting to protect them from arrest or helping them escape;

Articles 311 to 316 relating to assistance in the escape of prisoners.

It is noted that Morocco is currently preparing amendments of the Penal Code and completing the ratification procedures for the International Convention for the Suppression of the Financing of Terrorism. Does Morocco intend to make the financing of terrorism an autonomous offence?

The recasting of the Moroccan Penal Code is under study, and taking into account the particular importance attached to the issue of terrorism, the latter will be incorporated in the category of serious crimes, given that the Code punishes by criminal sentences most of the crimes regarded as terrorist acts. It is the nature of the penalty imposed for a criminal act which determines whether it falls within the category of crimes, offences or infractions.

Subparagraph 1 (c)

How does Moroccan law permit the freezing of funds as required by subparagraph 1 (c)?

Moroccan legislation permits the freezing of funds as a protective measures pending a judicial decision.

Subparagraph 1 (d)

What provisions are there for ensuring that funds received by associations for specific purposes are not used to finance terrorist activities?

In the context of Morocco's resolve to join in the efforts of the international community to combat capital laundering and the financing of terrorism, measures have been taken by the Ministry of the Economy, Finance, Privatization and Tourism to subject movements of funds within the country to authorization. These have been enacted as administrative measures. In the course of this year Morocco will establish

legal machinery for combating these two scourges which should provide inter alia for:

- The categorization of capital laundering and the financing of terrorism as crimes;
- The obligation for financial institutions to make statements of suspicion with respect to all operations relating to capital laundering or to acts associated with the financing of terrorism;
- Freezing of the funds and assets of terrorists and their sponsors;
- The establishment of an autonomous structure to process financial information relating to capital laundering and the financing of terrorism, along the lines of TRACFIN in France.

Subparagraph 2 (a)

Please outline the measures, both legislative and practical, preventing entities and individuals from recruiting, collecting funds or soliciting other forms of support for terrorist activities to be carried out inside or outside Morocco, including, in particular:

- *The carrying out, within or from Morocco, of recruiting, collecting of funds and soliciting of other forms of support from other countries; and*
- *Deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organizations.*

Articles 1 and 5 of the Dahir of 12 October 1971 prohibit the collecting of funds without prior authorization from the competent Moroccan public authorities.

Subparagraph 2 (b)

The Counter-Terrorism Committee notes the issuing of a government circular requesting the various ministerial departments to collaborate closely in order to ensure the full implementation of the relevant international legal instruments. In that context, please provide the Committee with information on the mechanism for inter-agency cooperation between the authorities responsible for narcotics control, financial tracking and security with particular regard to the border controls preventing the movement of terrorists.

An identity check is performed on any person crossing at a border checkpoint. This verification is performed by consulting a computerized database containing the list of persons wanted at the national or international level. This list, which is constantly updated, also includes the names of persons involved in terrorist acts.

Subparagraph 2 (c)

Please outline the relevant provisions of Moroccan legislation which implement subparagraph 2 (c) of the resolution.

Article 129, paragraph 4, of the Penal Code treats as accomplices in a crime or offence those who, without directly participating in the infraction, have, while aware of their criminal conduct, habitually provided accommodation, a place of

concealment or a meeting place for one or more persons engaging in armed robbery or violence against the security of the State, public order, persons or property.

Subparagraph 2 (d)

Does the background check of an alien applying for the issue or renewal of a residence card include a check on whether the person is involved in a terrorist activity against a foreign country? What is the Moroccan practice if this is found to be the case?

Any foreigner applying for a residence card, is the subject of the investigation into his morals and known judicial background in Morocco. The application is refused if the applicant's presence in Moroccan territory may impair the interests of the State. It should also be pointed out that the investigations of applicants for residence in Morocco requested of the countries of origin cannot be made through the normal channel of the Interpol Central Office, as these cases relate only to requests for purely administrative information.

How are Moroccan citizens involved in terrorist activities against foreign countries dealt with?

Three situations may arise in the case of a Moroccan national being involved in terrorist activities:

- The act is committed on Moroccan territory: in this case Moroccan justice is competent to initiate proceedings and rule on the matter;
- The act is committed in a foreign country by a Moroccan citizen who takes refuge in Morocco: in this case, the applicable Moroccan legislative provisions do not permit his extradition. Nevertheless, the accused may be tried in Morocco if the competent Moroccan authorities receive official notification on the subject;
- A Moroccan citizen is detained abroad: requests for information on the detainee made by the state of detention are communicated to it as rapidly as possible.

Subparagraph 2 (e)

Are there provisions in the Moroccan Penal Code or the Moroccan Code of Penal Procedure which criminalize all terrorist acts committed abroad by a Moroccan citizen or by a person having his or her habitual residence in Morocco and give jurisdiction to the Moroccan courts over such persons?

Articles 748 to 756 of the Code of Penal Procedure deal with jurisdiction concerning certain offences committed outside the Kingdom of Morocco.

Moroccan courts are competent to try any Moroccan and any person who has acquired Moroccan nationality for criminal acts committed outside Moroccan territory that are defined as crimes or offences, if the alleged guilty party returns to Morocco and is unable to prove that he was the subject of an irrevocable decision (article 751). Prosecution in Morocco is possible even if the alleged guilty party obtained Moroccan nationality after carrying out a criminal act.

Are there provisions in Moroccan legislation which criminalize terrorist acts committed abroad by foreigners and give jurisdiction to Moroccan courts over such persons if they happen to be in Morocco?

The jurisdiction of Moroccan courts to judge the principal act extends to all acts of complicity or concealment, even those perpetrated outside the Kingdom by foreigners (article 748, paragraph 3).

Subparagraph 2 (f)

Please outline the relevant domestic legal provisions governing legal assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorists acts and in connection with extradition.

Articles 166 to 170 and 757 to 760 of the Code of Penal Procedure deal with the question of legal assistance in connection with investigations and criminal proceedings in criminal cases.

What is the legal time frame within which a request for judicial assistance in criminal investigations or criminal proceedings relating to the financing or other support of terrorist acts is required to be met and how long, on average, does it actually take in practice to implement such a request in Morocco?

Investigations and criminal proceedings in crimes relating to the financing and support of terrorist activities are accorded priority and exceptional importance.

The time allotted to carry them out varies from case to case depending on the nature of the investigations and their subject and complexity and cannot, in any case, exceed two months (cf.: case involving the Al-Qaida network in Morocco under investigation).

Subparagraph 2 (g)

Please explain how the procedures for the issuance of identity papers and travel documents prevent the counterfeiting, forgery or fraudulent use of those documents and what measures exist to prevent their forgery etc.

The issuance of identity papers and travel documents is subject to a complex procedure designed to prevent any type of forgery.

In addition, monitoring personnel at border posts are equipped with the appropriate technical means for detecting and discovering any case of forgery, counterfeiting or usurpation of identity.

How does Morocco define the term "high-risk countries", which appears under subparagraphs (g) and (h) of the report (page 11)?

The Kingdom of Morocco is firmly committed to respect for international legality and therefore considers any country which offers itself as a base for hostile activities against other foreign countries a "high-risk country".

How does Morocco secure its extensive borders against persons coming from "high-risk countries"?

What action has been taken or is proposed by Morocco to implement controls at its ports in order to prevent the movement of persons involved, or alleged to be involved, in terrorist acts?

In addition to security and control measures at border posts, including ports, the personnel of the various security services (the police, royal gendarmerie, the royal armed forces ...) vigilantly ensure the defence of the national territory and land, air and sea surveillance of the Kingdom's extensive frontiers.

Accordingly, within the framework of Morocco's participation in the international campaign to combat international terrorism in all its forms and thanks to the coordination of the Kingdom's border security and control services with their counterparts abroad, they have been able to identify, arrest and dismantle an Al-Qaida cell that was preparing to carry out attacks from our country.

This cell, which was exposed in mid-May 2002, was preparing terrorist acts in Morocco and against foreign interests in the Strait of Gibraltar.

Subparagraph 3 (c)

According to the report, Morocco has concluded more than 30 relevant conventions with 18 States. Please specify with which of these countries Morocco has entered into extradition treaties on the one hand and into treaties on mutual assistance in criminal matters on the other.

Morocco has concluded the following bilateral agreements on legal cooperation and extradition:

1. **Bilateral convention on extradition:**

Belgium	Agreement on Extradition, signed on 7 July 1997

2. **Bilateral assistance conventions in criminal matters:**

Algeria	Convention on Mutual Assistance and Legal Cooperation, signed on 15 March 1963, and the Protocol thereto
Spain	Convention concerning Judicial Assistance in Criminal Matters and Extradition, signed on 30 May 1997
Romania	Convention on Legal Assistance in Civil and Criminal Matters, signed on 30 August 1972
Poland	Convention on Legal Assistance in Civil and Criminal Matters, signed on 21 May 1979
United States of America	Convention on Legal Assistance in Criminal Matters, signed on 17 October 1983
Belgium	Agreement on Legal Assistance in Criminal Matters, signed on 7 July 1997
Portugal	Convention on Legal Assistance in Criminal Matters, signed on 14 November 1998

3. Bilateral conventions on criminal matters and extradition

France	Convention on Mutual Legal Assistance, Execution of Decisions and Extradition, signed on 5 October 1959
Gabon	Convention on Mutual Legal Assistance, Exchange of Legal Information, Execution of Decisions and Extradition, signed on 27 February 1989
Italy	Convention on Mutual Legal Assistance, Execution of Decisions and Extradition, signed on 12 February 1971
Mauritania	Convention on Legal Cooperation and Extradition, signed on 20 September 1972
Senegal	Convention on Legal Cooperation, Execution of Decisions and Extradition, signed on 3 July 1967
Tunisia	Convention on Legal Cooperation, Execution of Decisions and Extradition, signed on 9 December 1964
Turkey	Convention on Legal Assistance in Criminal Matters and Extradition, signed on 15 May 1989
Egypt	Convention on Legal Cooperation in Criminal Matters and Extradition, signed on 22 March 1989
Libyan Arab Jamahiriya	Convention on Notifications, Letters Rogatory, Execution of Decisions and Extradition, signed on 27 December 1962
United Arab Emirates	Agreement on Legal Cooperation, Execution of Decisions and Extradition, signed on 18 January 1978

Do any of the conventions mentioned in the report specifically concern terrorists or the prevention and suppression of terrorist acts?

These bilateral conventions do not specifically deal with the question of terrorism, they concern crime in all its forms.

Please clarify what is meant by "revitalization of bilateral agreements concluded on legal cooperation and extradition" in part II.A.8 of the report.

The Kingdom of Morocco is bound by a considerable number of bilateral legal cooperation agreements. Following the ratification of the international instruments on combating terrorism, there are plans to adapt them to the new commitments undertaken by Morocco under these international conventions.

Subparagraph 3 (d)

The Counter-Terrorism Committee would welcome a report, in relation to the relevant international conventions and protocols relating to terrorism, on the progress made by Morocco in:

- *Becoming a party to the instruments to which it is not yet a party; and*
- *Enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.*

Prior to the events of 11 September, Morocco had already ratified four conventions and protocols directly related to terrorism. They were:

(1) The Convention on Offences and Certain Other Acts Committed on Board Aircraft, adopted at Tokyo on 14 September 1963. Morocco acceded on 24 October 1975;

(2) The Convention for the Suppression of Unlawful Seizure of Aircraft, adopted at The Hague on 16 December 1970. Morocco acceded on 24 October 1975;

(3) The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, adopted at Montreal on 23 September 1971. Morocco acceded on 24 October 1975;

(4) The Convention on the Marking of Plastic Explosives for the Purpose of Detection, adopted at Montreal on 1 March 1991. Morocco acceded on 19 March 1999.

Following those tragic events and as a result of a speeding up of the internal procedures required for the purpose, Morocco has ratified four further conventions and protocols. They are:

(1) The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, adopted at Montreal on 23 September 1971. **Morocco ratified on 13 November 2001**;

(2) The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, adopted at New York on 14 December 1973. **Morocco ratified on 13 November 2001**;

(3) The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, adopted at Rome on 10 March 1988. **Morocco ratified on 13 November 2001**;

(4) The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, adopted at Rome on 10 March 1988. **Morocco ratified on 13 November 2001**.

The procedure for ratification of and accession to four additional conventions is in its final stage. They are:

(1) The International Convention against the Taking of Hostages, adopted at New York on 17 December 1979;

(2) The Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;

(3) The International Convention for the Suppression of Terrorist Bombings, adopted at New York on 15 December 1997;

(4) The International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999. Signed by Morocco on 12 October 2001.

Morocco has also succeeded to, ratified or acceded to 11 conventions and protocols indirectly related to terrorism. These are:

(1) The International Opium Convention, adopted at Geneva on 12 February 1925. Morocco notified its succession to this Convention on 7 November 1956;

(2) The Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, adopted at Geneva on 13 July 1931. Morocco notified its succession to this Convention on 7 November 1956;

(3) The Protocol amending the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, done at New York on 11 December 1946. Morocco notified its succession to this Protocol on 7 November 1956;

(4) The Protocol Bringing Under International Control Drugs Outside the Scope of the Convention of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as amended by the Protocol adopted in New York on 11 December 1946. Morocco notified its succession to this Convention on 7 November 1956;

(5) The Single Convention on Narcotic Drugs of 1961. Morocco acceded to this Convention on 22 October 1966;

(6) The Convention on Psychotropic Substances, adopted at Vienna on 21 February 1971. Morocco acceded to this Convention on 7 November 1979;

(7) The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Morocco ratified this Convention on 9 October 1992;

(8) The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Paris, 13 January 1993. Morocco acceded on 28 December 1995;

(9) The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, adopted at Geneva on 10 October 1980. Ratified by Morocco on 10 April 2001;

(10) The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, adopted on 2 May 1972. **Morocco ratified on 29 January 2002**;

(11) The 1972 Protocol amending the Single Convention on Narcotic Drugs of 1961. **Morocco ratified on 29 January 2002**.

In addition, the procedure for ratification of the United Nations Convention against Transnational Organized Crime, adopted in New York on 15 November 2000, is in its final stage.

Thus, out of a total of 24 conventions and protocols directly or indirectly related to terrorism, Morocco has completed the procedure for acceding to or ratifying 19. For the other five, this procedure is in its final stage.

Subparagraph 3 (e)

Have the crimes set forth in the relevant international conventions and protocols been included as extraditable offences in the bilateral treaties which Morocco has concluded with other countries?

On the whole, the crimes covered by the bilateral conventions concluded between Morocco and other foreign countries which are regarded as crimes of terrorism entail extradition, as provided for in the United Nations conventions against terrorism, with the exception of political crimes or crimes of a political nature and crimes involving a breach of military obligations.

Subparagraph 3 (f)

Please clarify how, by the verification of the morality, income and legal record of a person, Morocco ensures that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, given the particular requirements of section F of article 1 of the Convention Relating to the Status of Refugees, to which Morocco is party.

The inquiries conducted by the police services are extremely specific regarding the various aspects of the refugee's life and are punctilious about his previous political activities. Once this status is accorded, the services ensure that the refugee respects the obligations deriving from his status.

Subparagraph 3 (g)

According to article 5 of Dahir No. 1-58-057 of 8 November 1958, extradition is refused when the offence has a political character. Please clarify the legal effect of this provision in view of subparagraph 3 (g) of the resolution, which requires States to ensure that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists.

All of the bilateral conventions concluded between Morocco and other countries with relation to the extradition of foreigners provide for refusal of requests for extradition in cases where the crimes to which the request relates are political in nature or associated with a political crime, pursuant to article 5 of Dahir No. 1-58-057 of 8 November 1958 on the extradition of foreigners. With regard to the legal effects of this provision in the light of paragraph 3 (g) of Security Council resolution 1373 (2001), which recommends ensuring that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists, the amendment of Moroccan penal legislation which is under way will make it possible to introduce new provisions that will have to adapt to the provisions of the International Convention on the Financing of Terrorism, the procedure for ratification of which by Morocco is in its final stage.

Other matters

Could Morocco please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution.

The information on Moroccan administrative machinery is available on the web site of the Ministry of Culture and Communication at the following address: http://www.mincom.gov.ma/mol/content/.

United Nations S/2002/778

Security Council

Distr.: General
19 July 2002

Original: English

Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 10 April 2002 (S/2002/390).

The Counter-Terrorism Committee has received the attached supplementary report from Spain, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Note verbale dated 26 June 2002 from the Permanent Mission of Spain to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of Spain to the United Nations presents its respects to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001), and has the honour to transmit the additional information requested by the Committee in the context of resolution 1373 (2001) (see enclosure). The request was made following receipt of the report submitted by Spain.

The Permanent Mission of Spain takes this opportunity to convey to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism the renewed assurances of its highest consideration.

Enclosure

Reply to the letter from the Counter-Terrorism Committee requesting additional information concerning the report of Spain submitted pursuant to paragraph 6 of resolution 1373 (2001)

Subparagraph 1 (d)

Could Spain please describe how the financial tracking system ensures that funds received by charitable and similar associations are not diverted from the associations' stated purposes to terrorist activities.

The entities that make up the financial sector (banks, savings banks, credit cooperatives, insurance entities, brokerage services) are required to inform the Executive Service of the Committee for the Prevention of Money Laundering and Currency Offences of any operation that might be related to criminal activities of armed bands, organizations or terrorist groups (Act 19/1983, article 3, of 28 December). Naturally this includes operations carried out through financial entities on behalf of charitable associations.

In addition, charitable associations that are foundations are subject to the Public Administrations Protectorate which may, if necessary, summon the foundation to appear in court (Act 30/1994, article 34, of 24 November).

Subparagraph 2 (e)

What is the extent of the competence of your courts to deal with terrorist acts or preparations for terrorist acts that occur outside your territory.

Article 23, paragraph 4, of the Organic Law of the judiciary branch states that Spanish courts are competent to deal with offences that are committed outside Spain by Spanish or foreign nationals and that, under the Spanish Penal Code, can be characterized as terrorism.

Subparagraph 2 (f)

Please report progress with the ratification of the UN Convention for the Suppression of the Financing of Terrorism and with the establishment of the terrorism financing oversight committee mentioned in the report.

The International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999) was signed by Spain in New York on 8 January 2001. Spain deposited the instrument of ratification with the Secretary-General of the United Nations on 9 May 2002 and the Convention entered into force for Spain that same day and was published in the Boletín Oficial del Estado on 23 May 2002.

The bill for the Prevention and Blocking of the Financing of Terrorism which provides for the establishment of a committee to monitor activities relating to the financing of terrorism was submitted by the Government to Parliament on 22 March 2002 and is currently before Parliament. The deadline for submitting amendments was 30 April 2002; the amendments were published on 9 May.

Subparagraph 3 (c)

Please list the relevant bilateral agreements entered into by Spain.

Agreements in force

- Agreement between the Government of the Kingdom of Spain and the Government of the Republic of Bulgaria concerning cooperation in the fight against crime (came into force on 9 August 1999).
- Agreement between Spain and the Slovak Republic concerning cooperation in respect of the fight against organized crime (came into force on 29 January 2000).
- Agreement between Spain and Italy concerning cooperation in the fight against terrorism and organized crime (entered into force on 12 May 1987). It has been superseded in part by the European Convention on Extradition.
- Agreement between the Government of the Kingdom of Spain and the Government of the Russian Federation concerning cooperation in the fight against crime (came into force on 9 June 2000).
- Agreement between the Government of the Kingdom of Spain and the Government of the People's Republic of China concerning cooperation in the fight against organized crime (came into force on 6 June 2002).

The agreements signed by Spain in this area with Poland and Ukraine will come into force once the necessary internal procedures have been completed.

The agreement between the Ministries of the Interior of Spain and Hungary concerning cooperation in the fight against terrorism, illicit drug trafficking and organized crime of 2 March 1992 has the status of a political agreement.

Subparagraph 3 (e)

Have the crimes specified in the relevant international conventions been included as extraditable offences in the bilateral treaties which Spain has concluded with other countries as provided for in a number of the relevant international conventions and protocols relating to terrorism?

Regarding crimes which may give rise to extradition in Spain, it is necessary, first, to refer to the Act of 21 March 1985 that regulates passive extradition, article 2 of which states that "extradition may be granted for offences that are also characterized as offences under Spanish law and for which Spanish laws and those of the requesting Party impose a penalty of deprivation of liberty or detention order for not less than four months".

With regard to the relationship with the countries that are signatories to the European Convention on Extradition of 13 December 1957, it is pointed out that extradition shall be granted in respect of offences that are punishable, under the laws of the requesting Party and those of the requested Party, by deprivation of liberty or detention order for a period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months.

Many bilateral treaties on extradition provide for similar measures.

Given that the agreements concerning cooperation in the fight against international organized crime cover a series of serious offences, including international terrorist acts, the penalties for which are greater than the above-mentioned penalties of deprivation of liberty, the offences they cover are extraditable offences.

Special mention should be made of the treaties between Spain and Italy and between Spain and the United Kingdom concerning accelerated surrender procedures (which, under the common legal space, would replace extradition) for offences punishable by a penalty of deprivation of liberty for at least 12 months (which presupposes, as has been stated, the inclusion of terrorist offences.

Finally, as the Committee is aware, the framework decision of the European Council concerning a European arrest warrant and surrender procedures between member States, provides for the surrender of any person sought for an offence, including terrorism, under a European arrest warrant and does not require that the offence be characterized as such under the laws of both States.

Other matters

Could Spain please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution.

Ministry of the Interior

Organic Law 2/86 of 13 March, concerning security forces and bodies, assigns to the Spanish Police and the Civil Guard their respective areas of competence and gives each of them specific tasks; it assigns specific competence for immigration control to the Spanish Police, and competence for customs, taxation and financial control and for action to prevent and prosecute smuggling, drug trafficking and fraud, among other offences, to the Civil Guard.

Royal Decree 1449/2000 of 28 July, amending and extending the basic organic structure of the Ministry of the Interior, in its articles 3 and 4, specifies the structure of the Directorate-General of the Police and of the Directorate-General of the Civil Guard. The text of the Royal Decree is set forth in the annex hereto.*

In accordance with the provisions of the above-mentioned Royal Decree 1449/2000 and of the Ministry of the Interior Order of 10 September 2001, extending the organic structure and functions of the central and peripheral services of the Directorate-General of the Police, there is a Subdirectorate-General for Operations which reports to the Director-General, and to which the Immigration and Documentation Commission and the Information Commission report.

The administrative machinery used by the police to control immigration, in accordance with the laws, regulations and other documents that are seen as contributing to compliance with resolution 1373 (2001) on the part of the Spanish Police, is assigned to the Immigration and Documentation Commission and to the Information Commission; the Information Commission's competences, functions and structure are brought to bear in the endeavour to combat terrorism, since it is responsible for identifying persons who may fall within the purview of resolution

* The annex is on file with the Secretariat and is available for consultation.

1373 (2001), by means of communications, as appropriate, to the information technology services of the Directorate-General of the Police.

The Immigration and Documentation Commission has been given responsibility for controlling the entry of Spanish and foreign nationals into Spanish territory and their departure therefrom, as well as for the functions set forth in the legislation concerning foreigners, refugees and asylum-seekers, expulsion, and emigration and immigration (Organic Laws 4/2000 and 8/2000, and Royal Decree 864/2001).

To achieve the goals in question, and in view of the abolition of borders inside the Schengen area, border controls are carried out at the external borders by means of filters set up for that purpose at border stations, for the inspection of papers and to ascertain that other requirements laid down by current legislation for entry into a given country are met. These border stations have the necessary technical means for detecting manipulation of and tampering with papers.

Operational deployment of mobile squads has also proved particularly effective at internal borders, and also in connection with the monitoring of recreational and fishing ports.

A major effort is also being made to combat networks that lure individuals with the aim of bringing them into Spain on an irregular basis, or via Spain into the rest of Europe. That is what the central unit to combat immigration networks and falsification of papers (UCRIF) is endeavouring to achieve, by coordinating cooperation between the Spanish Police and international police organizations (Europol and Interpol); it also supervises the activities of local units throughout Spain.

Lastly, the functions, competences and structures of the Information Commission cannot be disclosed.

With respect to the State functions relating to customs, taxation and financial supervision entrusted to the Civil Guard, under Organic Law 2/86 of 13 March, concerning security forces and bodies, reference must also be made to Royal Decree 1449/2000 of 28 July, extending the basic organic structure of the Ministry of the Interior, article 4 of which extends the structure of the Directorate-General of the Civil Guard; the Directorate-General has three subdirectorates-general, one being the subdirectorate-general for operations, which reports to the taxation and border authorities, which perform the above-mentioned functions.

Ministry of Economic Affairs

The conduct and promotion of the policy of preventing money-laundering (which includes criminal activities connected with armed bands or organizations, or terrorist groups) is the responsibility of the Committee for the Prevention of Money Laundering and Currency Offences. The Committee is a collegiate body, chaired by the Secretary of State for Economic Affairs, whose membership is made up of representatives of a range of bodies and institutions (for example, ministries, the Attorney-General's Office and the Autonomous Communities). In performing its functions, the Committee is supported by two bodies:

1. The Executive Service, which falls within the purview of the Bank of Spain and has a unit known as the National Police Brigade for the Investigation of Currency Offences (BIDM);

2. The Secretariat, which is a component of the Ministry for Economic Affairs, the Spanish authority responsible for ensuring compliance with European Community regulations concerning the freezing of assets connected with terrorism (regulation EC 2580/2001 of 27 December 2001, and regulation EC 881/2002 of 27 May 2002).

The future committee to monitor activities relating to the financing of terrorism will also be a collegiate body chaired by the Secretary of State for Security, whose members will be representatives of the Attorney-General's Office and of the Ministries of Justice and of the Interior, and of the Ministry for Economic Affairs, appointed by the relevant department heads.

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Security Council

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17 July 2002

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Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo

I. Introduction

1. The present report is submitted pursuant to Security Council resolution 1244 (1999) of 10 June 1999, by which the Council decided to establish the United Nations Interim Administration Mission in Kosovo (UNMIK), and requested a report at regular intervals on the implementation of its mandate. The current report covers the activities of UNMIK and developments in Kosovo, Federal Republic of Yugoslavia, since the report of 22 April 2002 (S/2002/436). Matters reported to the Security Council at its meetings on 24 April, 16 May and 26 June are referred to as necessary (see S/PV.4518, 4533 and 4559).

II. Building functioning democratic institutions

A. Executive and legislative branches

2. An important development of the reporting period was the final formation of Kosovo's multi-ethnic Government, following the nomination at the end of May of Kosovo Serb representatives for the positions of Minister for Agriculture, Forestry and Rural Development and inter-ministerial Coordinator for Returns in the Office of the Prime Minister. On 12 June, all members of the Government swore an oath of office, pledging their commitment to work for the benefit of all communities. The Assembly adopted the Government programme, which was based on the agreement of 28 February (see S/2002/436) and endorsed the benchmarks my Special Representative outlined to the Security Council in April 2002 (see S/PV.4518). Priorities included consolidating democratic structures, improving education and health care, and promoting economic development. The programme also focused on the protection of the rights and interests of communities, including the right to return, and regional integration.

3. In accordance with the Constitutional Framework on Provisional Self-Government in Kosovo of May 2001 (see UNMIK regulation 2001/9 of 15 May 2001), UNMIK continued to transfer responsibilities laid out in chapter 5 of that document to the executive branch of the provisional institutions of self-government. Progress varied from ministry to ministry, but overall the transfer of responsibilities proceeded fairly smoothly, and there was no major break in the provision of services.

4. Gradual progress was made in pushing the legislative process forward. The Assembly passed its first law, No. 2002/1, on the methodology for the level of basic pensions in Kosovo. Further draft legislation, on education and forestry, was sent to the committee stage. The Assembly Support Initiative, run by the institution-building pillar of UNMIK, which is led by the Organization for Security and Cooperation in Europe (OSCE), intensified its support and technical advice to the committees during the reporting period and trained committee chairpersons in examining and amending draft legislation.

5. Assembly members also gained experience from working visits to other Parliaments. Of particular value was a visit in May to the Northern Ireland Assembly, where the Kosovo delegation was able to see the work of another Assembly built against a background of

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community division. Further experience was gained in June when a multi-ethnic delegation of 30 Assembly members took part in a workshop on developing good governance in the United States of America, followed by a visit to Congress.

6. Both the executive and the legislature have taken steps to protect the rights and interests of communities. The Assembly decided to enlarge the membership of committees to accommodate the need for adequate representation of minority communities in its functional committees, as laid down by the constitutional framework. The Office of the Prime Minister established an Expert Group on Diversity Review with governmental and multi-ethnic participation, mandated with the promotion and monitoring of non-discriminatory government policy.

7. A reasonably good working relationship has been established between Assembly members representing different communities in the Assembly Presidency and in the committees. On a number of occasions, however, proposals made by the Kosovo Serb Assembly members were ignored in the course of Assembly debates and suggested amendments to draft legislation not taken into consideration. On 4 July Kosovo Serb members walked out of the Assembly meeting after the Assembly President failed to include their amendments in the draft resolution on the rights of communities and their members and on the conditions for return of internally displaced persons and refugees. At the same session, the President of the Assembly threatened Kosovo Serb members with sanctions if they continued to refer to Kosovo and Metohija. UNMIK is working with both the President and the individual parties to address these issues.

8. Although the constitutional framework provides a clear distinction between transferred responsibilities (chapter 5) and those reserved for my Special Representative (chapter 8), the exact delineation of those responsibilities was an issue of discussion. My Special Representative intervened on several occasions to clarify the areas for which he has sole responsibility. Since international relations are part of his reserved responsibilities, he declared null and void the resolution adopted by the Assembly on 23 May on the border demarcation agreement between the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia. Similarly, he declared null and void a memorandum of understanding on economic cooperation agreed between the Kosovo Minister of Trade and Industry and his Albanian counterpart, which was negotiated and concluded contrary to the provisions of the constitutional framework. Guidelines have now been issued for agreements of the provisional institutions with Governments and international organizations.

9. Despite the inevitable jostling for more responsibilities, overall the relationship between UNMIK and the provisional institutions in this initial transfer phase has been good. The establishment in May of the Economic and Fiscal Council, as provided for by the constitutional framework, enhanced consultations and policy coordination between UNMIK and the provisional institutions. So far, the Council has discussed the Kosovo Trust Agency, the Kosovo Pension Savings Trust, draft legislation on public financial management and accountability, and the need for coherence and coordination of legislation in the transferred and reserved areas.

B. Civil service

10. Building up a professional civil service remained difficult, due, in large part, to the low salaries that could be offered by the Kosovo consolidated budget. An important step forward was the recent short-listing of candidates for the key posts of permanent secretaries in the ministries and in the Office of the Prime Minister. It is important to secure the early recruitment of permanent secretaries, as this function continued to be carried out by principal international officers.

11. Progress in recruiting minority members of the civil service remained mixed, although increased numbers of recruited minority personnel indicated that Kosovo Serbs have started to join the administration. In particular, the Agriculture Ministry, now headed by a Kosovo Serb, succeeded in recruiting and integrating a number of minority community staff in the Ministry's central office. UNMIK continued efforts to provide favourable conditions for minority recruits, including its public transport service for minority staff members. A further boost to minority recruitment was given by the signing in June by my Special Representative of a memorandum on the establishment of proportional community representation. This initiative entrusted the Ministry of Public Services with the task of ensuring that members of both internally displaced and refugee communities, especially minority communities, were eligible for civil service positions. In addition, it

specified the need to draw up a detailed affirmative action plan to help both the ministries and the municipalities to meet proportional ranges for ethnic and gender representation throughout the civil service.

C. Preparations for municipal elections

12. An important element in the preparation of the municipal elections, scheduled for 26 October 2002, is the increase in responsibilities of the local electoral bodies, particularly the Municipal Election Commissions. A large number of non-governmental organizations and political entities, including Kosovo Serb entities, have applied to observe the electoral process.

13. This year, the institution-building pillar assumed direct management of the by-mail and out-of-Kosovo electoral operations in Serbia proper and Montenegro. The by-mail operation, to over 35 countries, began on 10 June. On 6 July, the institution-building pillar signed a memorandum of understanding with the Commissariat for Refugees in the Republic of Serbia, regarding the 2002 Voter Service Programme for Displaced Residents currently residing in Serbia, excluding Kosovo. A separate memorandum of understanding was signed with the Republic of Montenegro. Both offer people who lived in Kosovo on 1 January 1998 the opportunity to register to vote in the municipality in which they resided at that date.

14. The municipal elections will provide an important opportunity for those communities that boycotted the 2000 municipal elections, particularly the Kosovo Serb community, to take part. The conclusion of the political entity certification period on 1 July provided encouraging signals for increased minority community participation at the municipal level. To harness the interest shown, on 24 June the institution-building pillar began a project to assist minority communities in voicing their concerns about the functioning of local government and municipal services.

15. Several Kosovo Serb representatives made statements conditioning participation in the municipal elections on the establishment of separate Kosovo Serb municipalities, an idea presented to the Security Council in April 2002 (see S/PV.4518) by Nebojsa Covic, Deputy Prime Minister of Serbia and Head of the Federal Republic of Yugoslavia/Serbia Coordinating Centre for Kosovo. My Special Representative made it clear to Mr. Covic and to the authorities of the Federal Republic of Yugoslavia that such "cantonization" or "territorialization" was not a feasible option. Instead, UNMIK began to examine ways of using existing regulations, in particular regulation 2000/45, on the self-government of municipalities in Kosovo, to provide for the further devolution of responsibilities to the community level.

III. Laying the foundations for economic progress

16. High unemployment continued to pose a major challenge to the provisional institutions and the international presence in Kosovo. In the enterprise sector, the number of registered enterprises stabilized, and only the number of small private firms continued to grow. In addition, the revenue of the Kosovo consolidated budget stopped growing. It is too early to draw any definite conclusions, but it seems that the period of rapid fiscal expansion is over and that diminishing donor interest has started to have a negative effect on the consolidated budget.

17. On 13 June, my Special Representative promulgated regulation 2002/12, on the establishment of the Kosovo Trust Agency, and regulation 2002/13, on the establishment of a special chamber of the Supreme Court of Kosovo on matters related to the Kosovo Trust Agency, which will permit the privatization of Kosovo's socially owned enterprises and enhance efficient management of key providers of public utility services. Following its establishment, the Trust Agency began to examine the assets, commercial viability, and cadastral records of some 500 socially owned enterprises in Kosovo. The Agency will also take over the responsibility for a number of State-owned enterprises, including the electricity supply and distribution firm, the telecommunications company and the airport.

18. The provisional institutions and the European Union-led economic reconstruction pillar of UNMIK launched several initiatives to promote economic development. In an effort to attract foreign investment, particularly important now that the Kosovo Trust Agency is in place, they started a series of investment conferences aimed at informing Kosovo diaspora businessmen living in Western Europe and the United States about investment opportunities in Kosovo. The

first conference, attended by over 200 Kosovo Albanian non-resident businessmen, was held in Switzerland on 8 June. In addition, the Ministry of Trade and Industry established a Regional Development Agency in Prizren in cooperation with the Government of Slovenia.

19. The dynamic development in the banking sector continued. Despite a post-euro conversion decline of deposits, commercial credits continued their accelerated growth: from 6.1 million euros in December 2000, to 21.3 million in June 2001, 46.7 million in December 2001, and 78.6 in April 2002. Cash wire transfers also increased rapidly, partly because of the euro conversion. In the first quarter of 2002, cash transfers nearly tripled in comparison with the first quarter of the previous year.

20. Considerable progress was made towards providing access to competitive banking services for consumers and businesses. There are now 80 different commercial bank branches, including significantly improved access to services for minority communities. My Special Representative opened the first main branch of a commercial bank to operate in northern Kosovo (Zvecan) in June. A commercial bank also opened an automatic cash dispenser (ATM) in Gracanica (Pristina region), along with fully licensed part-time banking facilities for the local Kosovo Serb community.

IV. Tackling crime and violence

A. Security situation

21. The overall trend in the security situation remained encouraging, as the number of cases of murder, kidnapping, arson and looting continued to decrease. The main crime indicators showed that most crime had an economic basis. Demonstrations during the reporting period also tended to be based on economic issues (such as teachers' salaries) and were peaceful. One negative trend noted was the increase in reported rapes and aggravated assaults. There was also an increase in cases of domestic violence, although this may be due to increased public awareness resulting from UNMIK information campaigns.

22. UNMIK illustrated its continuing determination to enforce the rule of law on 18 and 19 June when it arrested six former members of the Kosovo Liberation Army (KLA), three of whom were active members of the Kosovo Protection Corps (KPC), on charges of unlawful detention and torture of fellow Kosovo Albanians in June 1999. In contrast to the angry protests resulting from the arrests on war crimes charges of three former KLA members in January 2002, these arrests generated only localized reaction in western Kosovo. Further high-profile arrests were made by UNMIK police on 6 July. Eight Kosovo Albanians, three of whom were KPC members, were arrested for the brutal attack on a Kosovo Albanian family in Glogovac in August 2001, which resulted in the death of five people.

23. During the reporting period no serious or aggravated assaults were reported to be ethnically motivated. Although difficult to assess over a short period of time, the security situation of the minority communities seems to have improved. A year ago, attacks and intimidation of minority communities were still considered systematic; now they have decreased significantly and are considered more random. Freedom of movement has also improved, owing in part to the removal of KFOR fixed checkpoints and the resulting diminishing mental reliance on static security. Increasingly, Kosovo Serbs now drive unescorted through Kosovo Albanian areas, although there are still cases of Kosovo Serb cars being stoned. In line with this positive trend, KFOR and UNMIK planned the continuing transfer of civilian responsibilities from KFOR to UMMIK police.

B. Combating terrorism and organized crime

24. The attention UNMIK paid last year to laying a firm legal basis for combating terrorism and organized crime started to pay dividends. On 10 May, a panel of international judges handed down the first sentence on terrorism-related charges. The defendant, who was charged with the murder of the head of the Yugoslav Passport Office in Pristina in April 2001 under UNMIK regulation 2001/12 of 14 June 2001, on the prohibition of terrorism and related offences, was sentenced to 23 years' imprisonment. During the reporting period, international judges and prosecutors handled seven additional cases involving charges of terrorism, organized crime and illegal border crossing.

25. In mid-June, my Special Representative signed an exchange of letters with the Minister for Foreign

Affairs of the former Yugoslav Republic of Macedonia, enabling an international panel of judges in Kosovo to sentence a former KLA commander to 14 years' imprisonment for crimes committed in the former Yugoslav Republic of Macedonia. The defendant had been tried in Skopje for attempted murder and illegal weapons possession in 1998, but had fled before sentencing. This was the first time such a procedure was applied in Kosovo and it set an important precedent. Not only will this procedure provide a valuable tool in the fight against crime, it will also help ensure that Kosovo does not become a safe haven for criminals.

26. The UNMIK fight against organized crime and terrorism was boosted by the signing on 31 May of a Protocol on Police Cooperation with the Governments of Serbia and the Federal Republic of Yugoslavia. The Protocol was negotiated within the framework of the High-ranking Working Group established through the Common Document of November 2001 and will allow an exchange of information between the UNMIK police and their Serbian and Yugoslav counterparts. UNMIK also started negotiations with the authorities of Albania and Montenegro with a view to concluding similar police cooperation arrangements.

27. On 10 May, my Special Representative organized a regional conference in Pristina to discuss ways to combat cigarette smuggling. The ensuing Pristina Declaration laid out a comprehensive set of measures to reduce the level of cigarette smuggling in the region. My Special Representative made further proposals for regional cooperation in the fight against organized crime at a meeting of the South-East European Cooperation Process in Belgrade in June. During the reporting period UNMIK police and the Kosovo Police Service (KPS) conducted several successful anti-smuggling operations, including the seizure of sizeable quantities of cigarettes, fuel and alcohol on the administrative boundary line with Montenegro. On 4 July, UNMIK customs officers seized over 20 million cigarettes in raids in Leposavic municipality in northern Kosovo.

C. Building local law enforcement and judicial capacity

28. Building local law enforcement capacity remained an essential goal and substantial progress has been made in this area. Almost three years after the opening of the Kosovo Police Service School, there are now more KPS officers than UNMIK police. To date, approximately 4,770 KPS officers have completed basic training and have been integrated, or are in the process of being integrated, into the operational law enforcement regime with UNMIK police. The Kosovo Police Service remained one of the best examples of a modern, multi-ethnic institution: 16.2 per cent are women and 15.3 per cent are from minority communities, including 8.3 per cent from the Kosovo Serb community. KPS officers of different ethnicities continued to work successfully together in the field, carrying out joint patrols in many areas.

29. An indicator of progress to date in building local police capacity was the fact that the last class to graduate basic training was the first to have several courses (2 out of 10) taught solely by local police instructors. A senior rank structure has been introduced incrementally in the Kosovo Police Service and the first promotions are now being awarded: 203 officers have been promoted to sergeant, and in June 2002 the introduction of a middle management command officers' course coincided with the selection of the first 20 lieutenants.

30. While there are 27, out of a target of 34, international judges and prosecutors, the indigenous justice system comprises 337 local judges and prosecutors. This includes 314 Kosovo Albanians, 4 Kosovo Serbs, 10 Kosovo Bosnians, 7 Kosovo Turks and 2 Kosovo Roma.

31. UNMIK remained committed to increasing the representation of minority communities in the local judiciary. On 20 May, some 80 Kosovo Serb judges and prosecutors, currently residing in Serbia proper and Kosovo, attended an information-sharing session on employment opportunities in Kosovo. An agreement in principle was reached at meetings my Special Representative held in Belgrade on 6 July with Mr. Covic and the Serbian Justice Minister, Vladan Batic. It was concluded that the authorities of the Federal Republic of Yugoslavia would encourage candidates to submit their applications by 15 July and that the Government of Serbia would guarantee pension and

social security rights. Significant progress in the recruitment of Kosovo Serb judges and prosecutors, however, depends on Serbia taking steps to dismantle the structure of parallel courts in which many former judges and prosecutors are currently employed.

V. Creating conditions for sustainable returns and reintegration

A. The return process

32. Over the past few months, a climate has been created that, for the first time since the arrival of UNMIK, appeared conducive to promoting inter-ethnic dialogue and the possibility of return. An important development in this regard was the inclusion of both the majority and minority communities as an integral part of the return process. The Government followed up previous statements on its commitment to the return and reconciliation process with concrete action: the Prime Minister, Bajram Rexhepi attended the opening of a multi-ethnic youth centre in Kamenica and delivered part of his speech in Serbian; he also attended the Orthodox Easter ceremony at the Pec Patriarchate; and several ministers visited mixed municipalities to meet with representatives of the minority communities. On 28 June, all the municipal assemblies agreed to a Strategy of Joint Principles affirming the right to return. Also in June, the Kosovo Serb Senior Adviser on Returns joined the Office of my Special Representative.

33. On 4 July, the Assembly adopted a resolution on rights of communities and their members and on the conditions for return of internally displaced persons and refugees proposed by the Government. It underlined the right to return, repossess property and enjoy freedom of movement, and called on the competent institutions to facilitate return. The resolution was subsequently endorsed by Mr. Covic, who called it a very significant, positive step.

34. At the same time, there has been a modest increase in minority returns that has set in motion a certain momentum that can now be built upon. According to figures provided by the Office of the United Nations High Commissioner for Refugees (UNHCR), 997 internally displaced persons returned home to Kosovo during the first six months of 2002, 439 of whom were Kosovo Serbs. One of the largest return projects was that of 86 members of the Ashkali community to Vucitrn by 9 July. The outflow figures of minority community members were significantly less. UNHCR estimated that, during the same period, approximately 268 people left Kosovo.

35. Although progress remained mixed, there are indications that inter-communal relations are slowly improving. Grass-roots reconciliation projects have begun in several areas, such as a milk-sharing project in Novo Brdo, and there have been several multi-ethnic cultural and sporting events. For the time being, it is these smaller-scale, trade-based and cultural projects, which break the enclave mentality and improve freedom of movement, that hold out the best hope for success. More ambitious projects, such as a multi-ethnic market in Lipljan, have not been so successful, but remain an important target.

36. An important factor in building inter-communal trust was the fact that Kosovo Albanians began to be sentenced for crimes committed against minority communities following the arrival of the international presence in June 1999. In May 2002, for example, a panel of international judges handed down a 15-year sentence to a Kosovo Albanian male for the murder of an elderly Kosovo Serb woman in Prizren.

37. UNMIK sought to capitalize on these positive developments, which it also helped to bring about. In May 2002, my Special Representative briefed donors on the financial requirements of the returns process, which amount to over 16 million euros. Shortly thereafter the Mission launched its "concept paper on the right to sustainable returns" based on the principle of the individual right to return to the place of origin. The key principles were supported by Mr. Covic and the Coordinating Centre at a meeting of the High-ranking Working Group on 31 May. The aim is to achieve increasing returns this year so as to create the momentum for more significant numbers in 2003 and 2004. UNMIK has increased its grass-roots efforts to support minority returns: there are now 5 regional working groups on return, 24 municipal working groups, and 12 small task forces to address specific aspects of returns in particular locations. In addition, UNMIK continued to address remaining obstacles to return, including freedom of movement, providing internally displaced persons with accurate information about the situation in Kosovo, determining the fate of the missing of all communities, and the question of property.

B. Efforts to improve freedom of movement

38. Improved freedom of movement was visible during the reporting period. This was, in part, attributable to the gratis distribution to the Kosovo Serb community by UNMIK of Kosovo license plates to allow the freer circulation of cars. the Mission's continuing dialogue with the authorities of the Federal Republic of Yugoslavia was a further contributing factor. At a meeting of the High-ranking Working Group in Belgrade on 31 May, a Technical Agreement between UNMIK and Serbian Railways was signed that led to the resumption on 4 July of the train service between Belgrade and the Pristina region. On 6 July, agreement was reached on the text of a Protocol on the Movement of Registered Vehicles and the Issuance of License Plates and Vehicle Registration Documents, which will allow cars with Kosovo license plates to circulate freely throughout the Federal Republic of Yugoslavia.

C. Filling the information gap

39. An important innovation was the beginning of "go and inform" visits to communities of internally displaced persons in Serbia proper, which included, on at least one occasion, a member of the Kosovo Albanian community. The resulting town meetings with the internally displaced communities are now run jointly by UNMIK and the Coordinating Centre for Kosovo. On 5 July, my Special Representative visited the Smederevo Collective Centre in Serbia proper to exchange information with the internally displaced persons there.

40. UNMIK also worked to reach internally displaced persons through Internet-based information systems and cross-boundary media projects. The Serbian daily *Danas* began printing supplements on Kosovo issues, for example; and Radio Television Kosovo agreed to air children's programmes in Serbian. UNMIK worked to integrate its outreach approach to the internally displaced community, both with the Coordinating Centre for Kosovo and other actors involved in the process. The use of the media for outreach purposes was facilitated by agreements reached during a conference on bridging the information gap, held at in Pristina at the end of May, with media representatives from Kosovo, Serbia proper, Montenegro and other parts of the region.

D. Determining the fate of the missing of all communities

41. UNMIK moved forward the process of clarifying the fate of the missing, which remained one of the principal barriers to reconciliation. As a result of increased cooperation between the International Committee of the Red Cross and the International Commission on Missing Persons, as well as a restructuring of UNMIK operations in this area, there have been more identifications in the first months of 2002 than in the whole of 2001. At the beginning of May, a group of international forensic experts began work at the Forensic Institute at Orahovac, previously the morgue run by the International Tribunal for the Former Yugoslavia. So far, the Institute has performed 95 autopsies on remains from the 1999 conflict. Fifty-three sites were investigated during the reporting period, producing 123 remains. A further 60 sites remain under investigation. My Special Representative met with families of the missing of all communities, both separately and together, and made it clear that this issue could only be solved by working together.

E. Property

42. The activities of the Housing and Property Directorate (HPD), as the main means of adjudicating and safeguarding property rights in Kosovo, remained a priority for UNMIK. To date, HPD has received 17,364 claims out of an estimated possible total of 75,000, and has resolved 644 claims, of which 159 are settled and 485 are in the process of being adjudicated. The Directorate executed 203 evictions to implement those decisions. In implementing its mandate concerning abandoned properties, HPD has taken 1,465 properties under its administration, and 3,386 cases are under investigation.

43. In an attempt to ease financial difficulties, UNMIK and UN-Habitat signed a memorandum of understanding outlining the transfer of HPD from Habitat to UNMIK, as a legally and administratively independent entity under the auspices of UNMIK. In order to strengthen the financial basis of HPD, UNMIK

and UN-Habitat jointly organized two donor conferences, at Pristina and Brussels.

VI. Establishment of UNMIK authority throughout the whole of Kosovo

44. Mitrovica remained a challenge to the implementation of Security Council resolution 1244 (1999) and the authority of the international community in Kosovo. Following the upsurge of violence in April (see S/2002/436), UNMIK sought to stabilize the security situation on the ground by doubling the number of UNMIK police in northern Mitrovica and using its dialogue with the authorities of the Federal Republic of Yugoslavia to secure public support for change on the ground. It is important that such dialogue produces concrete results, particularly the dismantling of parallel structures.

45. The elimination of parallel structures, including security structures, can only be accomplished once a legitimate system is established that can replace them. On 10 June UNMIK launched a special recruitment campaign for Kosovo Serbs from northern Mitrovica to join the Kosovo Police Service, an initiative already endorsed by the Yugoslav and Serbian Governments in the Protocol on Police Cooperation signed on 31 May 2002. On the judicial front, UNMIK police sought to find sufficient evidence to prosecute criminal elements in northern Mitrovica. Key support for this came from the President of the Federal Republic of Yugoslavia, Vojislav Kostunica, and the Minister for Foreign Affairs, Goran Svilanovic, with whom my Special Representative spoke in Belgrade on 19 June at the foreign ministers' meeting of the South-East European Cooperation Process.

46. Economic regeneration in northern Kosovo remained a high priority. A number of donor programmes, generally targeted at medium-scale infrastructure development, are being developed in the area, and the increased availability of banking services, such as the opening of a branch of the American Bank of Kosovo in Zvecan in June, has supported some private sector development. The creation of the Kosovo Trust Agency, with a regional team based in Mitrovica, will further these efforts. Meanwhile, funding was found to support the first regional enterprise agency located in a minority area. The new Zvecan-based office will offer advice, expertise, and general business support facilities to the economic community of northern Kosovo.

47. The security, law and order and economic elements of UNMIK activities were complemented by an examination of possibilities to further devolve competencies to the municipal level, as envisaged in the Common Document, on the basis of the present Municipal Assembly structure; dialogue with Kosovo Albanian leaders to ensure their support and patience; and an examination of inter-communal confidence-building measures.

VII. Kosovo Protection Corps

48. The new structure of the Kosovo Protection Corps (KPC), adjusting the organization to 3,052 active members, was approved and the deactivation of the reserve began. The Corps, as well as the Fire and Rescue Service and the Engineering Section of UNMIK, was involved in assisting the population in Gnjilane following an earthquake in April 2002. The Engineering Section constructed containerized office accommodation to replace buildings that had been destroyed, and conducted technical assessments on 1,900 houses in the area. KPC received additional earthquake response training at the Turkish Civil Defence College in Ankara. There was an improvement in the recruitment of members from minority communities, for whom 10 per cent of positions remained reserved. A member of the Bosniac community was appointed Deputy Commander of the Corps on minority issues, and in June nine Ashkali joined KPC. Twenty per cent of jobs within the Emergency Management Division of the Directorate for Civil Protection are now filled by members of the minority community.

VIII. Relations with the Federal Republic of Yugoslavia

49. Enhanced dialogue with Belgrade yielded concrete, tangible results, through the High-ranking Working Group. Particular focus during the reporting period was placed on Mitrovica, economic policies, police and judicial cooperation, outreach to Kosovo Serb internally displaced persons, and evaluating conditions for return. An important confidence-

building gesture and example of the benefits of dialogue was the return to Kosovo by the authorities of the Federal Republic of Yugoslavia at the end of May of a 6,000-year-old figurine, the symbol of Kosovo's cultural identity.

50. In accordance with the Agreement on the Transfer of Sentenced Persons between UNMIK and the Federal Republic of Yugoslavia signed on 3 April, six Serb prisoners, of a total of 16 eligible prisoners, were transferred from Mitrovica Detention Centre to Serbia proper on 26 May. According to the Agreement, the Federal Republic of Yugoslavia and Serbia will continue to enforce the sentences and are bound by the legal nature and duration of sentences issued by the UNMIK justice system.

51. My Special Representative continued to encourage contacts between representatives of the provisional institutions and the authorities of the Federal Republic of Yugoslavia. A meeting between the Kosovo Finance and Economy Minister and the Serbian Minister of Finance was held at Pristina in May on the margins of the regional conference on cigarette smuggling. However, the Government of Kosovo underlined that the time was not yet ripe for full-blown high-level contacts, which continued to be carried out by my Special Representative. This is a gradual process, but one that is moving forward all the time: my Special Representative was, for the first time, accompanied by a Kosovo Albanian journalist for the meeting of the High-ranking Working Group held at Belgrade at the end of May. He was later accompanied by six Kosovo Albanian journalists when he visited the Smederevo Detention Centre and Belgrade at the beginning of July.

IX. Relations with the former Yugoslav Republic of Macedonia

52. The implementation of the Agreement on Border Delineation and Demarcation between the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia continued to have practical consequences, in particular for farmers whose grazing lands were affected by the Agreement. Within the Joint Expert Committee set up by my Special Representative and the President of the former Yugoslav Republic of Macedonia, Boris Trajkovski, in March 2002, UNMIK sought to find practical solutions. The authorities of the former Yugoslav Republic of Macedonia agreed in June in principle to a joint access permit for farmers and endorsed proposals to establish an additional provisional border crossing for the population of the border areas.

53. On 18 June, the Government in Skopje took a decision to abolish visas for the holders of UNMIK travel documents, which will be a significant boost to freedom of movement. In addition, it was agreed in principle that the authorities would recognize the UNMIK-issued Kosovo license plates and vehicle registration documents. These measures will contribute to greater mutual confidence and will, it is hoped, help to defuse the sometimes tense situation in the border communities.

X. Support matters

54. The reporting period was marked by a reduction of $61 million in the amount approved for the Mission for the period 2002-2003. The implementation of this reduction will necessitate the transfer of responsibility and authority to the provisional institutions earlier than planned. No reductions are planned in the number of civilian staff in the police and justice pillar, UNMIK police, or the formed police units. The budget reduction necessitated a decrease of $12 million in operational requirements. The decrease in the provision for operational requirements will be carried out, inter alia, by cancelling a number of engineering projects, reducing the purchase of replacement data-processing equipment by 50 per cent and reducing air operations by $1.2 million.

55. A project team, led by the Office of Internal Oversight Services, assisted by the auditing firm KPMG, is currently conducting a review of risk management in UNMIK. The review will focus on how UNMIK identifies, evaluates, manages and monitors its strategic, financial and operational risks and will run until mid-August 2002.

XI. Observations

56. The completion of the Government by the participation of the Kosovo Serbs was an important step forward for the provisional institutions of self-government. The period under review saw an inevitable testing of UNMIK and a push on the part of the

provisional institutions to gain more responsibilities. I support the firm approach taken by my Special Representative and call on the provisional institutions not to be sidetracked from the urgent issues for which they do have responsibility. The forthcoming municipal elections will provide an important opportunity to consolidate elected democratic structures.

57. Strengthening the rule of law throughout Kosovo remains a high priority. The recent arrests of former members of the Kosovo Liberation Army clearly demonstrated that no one is above the law. Continued support for the Mission's fight against crime, through criminal investigation leading to arrests and capacity-building of the local police and judiciary, will lead Kosovo towards normalization. The UNMIK regional approach to fighting crime promises to be effective and the initial signs of progress achieved are encouraging.

58. UNMIK is committed to achieving sustainable returns in the course of this year, creating the momentum for increased returns over the next few years. I welcome the fact that both the majority and the minority communities are now becoming an integral part of the process. Although it will take time to achieve a qualitative improvement in the conditions of the minority communities, an important precondition for such an improvement is inter-ethnic dialogue and reconciliation at the grass-roots level. For the first time since the deployment of UNMIK to Kosovo, the conditions for promoting genuine inter-ethnic dialogue seem to be in place and can be built upon. It is important for UNMIK to have the requisite financial assistance to see through the important process of returns. My Special Representative is concerned that a lack of funding may be an impediment to return and I call on the donor community to continue its support in this crucial area.

59. UNMIK has enhanced its focus on removing the remaining barriers to return and reconciliation. Gradual progress was made on determining the fate of the missing of all communities. My Special Representative has given encouragement to the families of the missing on all sides to engage in a dialogue, as it is only by working together that progress can be achieved. It is also important for the Kosovo Albanian community to cooperate with UNMIK to resolve the fate of the missing in Kosovo.

60. It is essential that UNMIK exercise its authority throughout the whole of Kosovo. My Special Representative is seeking immediate and longer-term solutions to the untenable situation in Mitrovica, and I call on the authorities of the Federal Republic of Yugoslavia to use their influence to dismantle the parallel structures still operating in Kosovo, and to publicly support UNMIK authority in northern Kosovo. Progress has been achieved during the reporting period in many areas through enhanced dialogue with the authorities of the Federal Republic of Yugoslavia. There is hope that the provisional institutions will soon participate in this dialogue.

61. Work continued on the benchmarks my Special Representative outlined to the Security Council in April 2002, which will be used as a strategic planning tool to provide direction and a vision for both the provisional institutions and UNMIK. They will be used as a means of regularly measuring progress, building capacity within the Kosovo institutions, stimulating planning processes and engaging the resources of the entire Mission. The provisional institutions were increasingly involved in the process of identifying and undertaking concrete actions to meet the benchmarks, the overall objective being eventual local ownership of the process.

62. UNMIK itself is facing demanding challenges in the coming months. The implementation of the budget reduction will necessitate the transfer of responsibility and authority to the provisional institutions earlier than planned. The Mission is doing its utmost to ensure that reductions do not impinge on its priority areas. The necessary downsizing of both human and material resources and the changes of tasks in connection with the establishment of the provisional institutions will add to the burden on the staff of the Mission.

63. I wish to express my gratitude to my Special Representative, Michael Steiner, and the men and women of UNMIK, who carry out their duties in often difficult and demanding circumstances. I also want to express my appreciation to the participating States and international organizations, particularly OSCE and the European Union, for their political, material and moral support of the Mission, which is essential for achieving the objectives set out in Security Council resolution 1244 (1999).

Annex I

Composition and strength of the UNMIK police (June 2002)

Country	*Number*	*Country*	*Number*
Austria	45	Malaysia	32
Belgium	2	Malawi	21
Bangladesh	82	Nepal	15
Bulgaria	96	Nigeria	90
Canada	19	Norway	15
Cameroon	19	Pakistan	204
Czech Republic	23	Philippines	63
Denmark	30	Poland	125
Egypt	68	Portugal	20
Fiji	53	Romania	185
Finland	19	Russian Federation	127
France	88	Senegal	15
Germany	390	Slovenia	15
Ghana	110	Spain	140
Greece	20	Switzerland	8
Hungary	5	Sweden	46
Iceland	3	Tunisia	6
India	506	Turkey	124
Italy	71	United Kingdom of Great Britain and Northern Ireland	163
Jordan	440	Ukraine	181
Kenya	42	United States of America	548
Kyrgyzstan	2	Zambia	38
Lithuania	9	Zimbabwe	61
Total			**4 524**

Composition of the Kosovo Police Service

Men	83.77 %
Women	16.23 %
Ethnic minority members	15.32 %
Kosovo Serbs	8.32 %
Total	**4 770**

Annex II

Crime statistics

	April-June 2002	*April-June 2001*	*Total in 2002*
Murder	24	104	54
Theft	406	1 628	3 798
Traffic in persons	3	27	10
Theft of vehicles	86	479	268
Robbery	37	114	95
Domestic assaults	43	3	130

Annex III

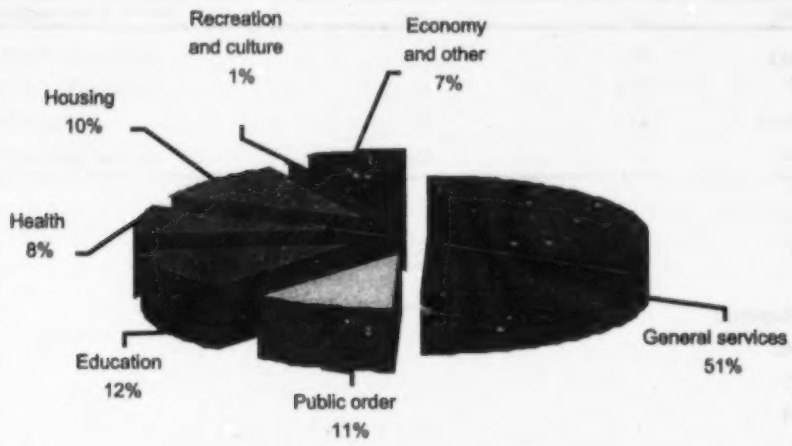
Composition and strength of the military liaison component of the United Nations Interim Administration Mission in Kosovo (at 30 June 2002)

Nationality	*Number of liaison officers*
Argentina	1
Austria	2
Bangladesh	1
Belgium	1
Bolivia	1
Bulgaria	1
Canada	1
Chile	1
Czech Republic	1
Denmark	1
Finland	2
Hungary	1
Ireland	3[a]
Italy	1
Jordan	1
Kenya	1
Malawi	1
Malaysia	1
Nepal	1
New Zealand	1
Norway	2[b]
Pakistan	1
Poland	1
Romania	1
Russian Federation	2
Spain	1
Switzerland	1
Ukraine	1
United Kingdom of Great Britain and Northern Ireland	1[c]
United States of America	2
Zambia	1
Total	**38**

[a] Including two non-commissioned officers.
[b] Including the Chief Military Liaison Officer.
[c] Director of the Advisory Unit on Security in the Office of the Special Representative of the Secretary-General.

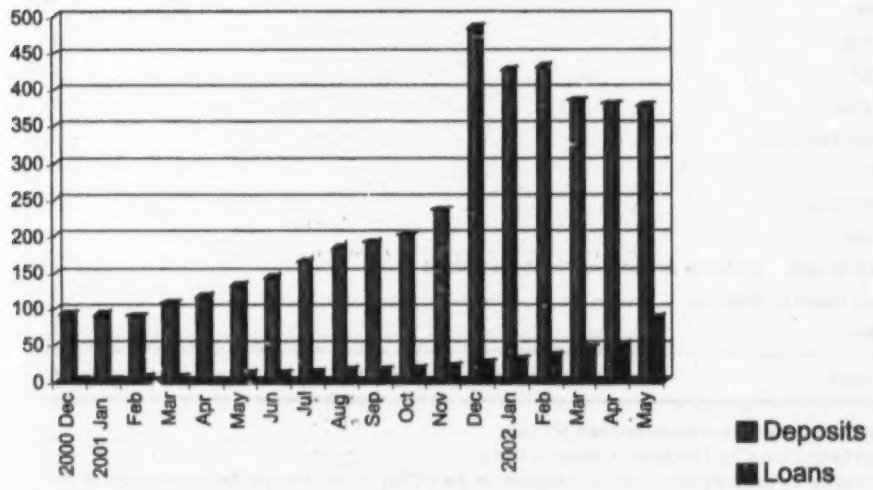
Annex IV

General budget expenditures by government function as a percentage of total expenditures, May 2002



Source: Central Fiscal Authority Treasury Office.

Deposits and loans, commercial banks, 1 January 2001 - 31 May 2002 (millions of euros)



Source: Banking and Payments Authority of Kosovo, Financial Services Reports.

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Cartographic Section

United Nations S/2002/780

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Letter dated 17 July 2002 from the Chargé d'affaires a.i., of the Permanent Mission of the Sudan to the United Nations addressed to the President of the Security Council

I have the honour in my capacity as Chairman of the Islamic Group at the United Nations to request that the Security Council extend an invitation to participate in the discussion without the right to vote under rule 39 of its provisional rules of procedure of the Council to His Excellency Mr. Mokhtar Lamani, Permanent Observer of the Organization of the Islamic Conference to the United Nations during the Council's discussion on "the situation in Afghanistan" on Friday, 19 July 2002.

(*Signed*) Omer Bashir **Manis**
Chargé d'affaires a.i.
Chairman of the Islamic Group

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General Assembly
Fifty-sixth session
Agenda item 62
Question of Cyprus

Security Council
Fifty-seventh year

Letter dated 17 July 2002 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a letter dated 17 July 2002 addressed to you by His Excellency Mr. Aytuğ Plümer, Representative of the Turkish Republic of Northern Cyprus (see annex).

I should be grateful if the text of the present letter and its annex would be circulated as a document of the General Assembly, under agenda item 62, and of the Security Council.

(*Signed*) Ümit **Pamir**
Ambassador
Permanent Representative

02-48567 (E) 190702

Annex to the letter dated 17 July 2002 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I have the honour to refer to the letter dated 23 May 2002 (A/56/962-S/2002/577) addressed to you by the Greek Cypriot representative at the United Nations, which contains allegations of "violations of the airspace of the Republic" and "of the flight information region (FIR) of Nicosia".

It will be recalled that similar allegations of so-called "airspace and FIR violations" were refuted in our previous communications addressed to you, most recently in my letter dated 16 May 2002 (A/56/954-S/2002/563). I wish to reiterate that flights within the sovereign airspace of the Turkish Republic of Northern Cyprus take place with the full knowledge and consent of the appropriate authorities of the State, over which the Greek Cypriot administration in South Cyprus has no jurisdiction or any right of say whatsoever. Furthermore, it should be underlined that the allegations of so-called violations of the flight information region or violations of air-traffic regulations are void and groundless under international law. Every precaution is being taken for the safety of navigation of civil air traffic during the activities of Turkish State aircraft within international airspace, within which the civil aviation authority of the Turkish Republic of Northern Cyprus is the only competent authority to provide air-traffic and aeronautical information services.

As stated in my previous letters, such allegations are based on the false and illegitimate claim that the sovereignty of the Greek Cypriot administration extends over the whole island, including the territory of the Turkish Republic of Northern Cyprus. This claim by the Greek Cypriot side is divorced from the existing realities in Cyprus, namely, the existence of two independent States, each exercising sovereignty and jurisdiction within their respective territories on the island.

I would like to state that at a time when direct talks between the two sides are continuing in Cyprus, this kind of politically motivated propaganda and unfounded allegations do not enhance prospects of achieving progress through the current phase of the talks. At this sensitive phase, it is all the more crucial that the Greek Cypriot administration adopt a realistic and constructive stance which would put them on the path of reconciliation. We hope that the international community will, in the period ahead, encourage the Greek Cypriot side in this direction.

I should be grateful if the present letter could be circulated as a document of the General Assembly, under agenda item 62, and of the Security Council.

(*Signed*) Aytuğ **Plümer**
Representative
Turkish Republic of Northern Cyprus

United Nations S/2002/782

Security Council

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English
Original: French

Letter dated 18 July 2002 from the Permanent Representative of Algeria to the United Nations addressed to the President of the Security Council

In anticipation of the consultations that the Security Council intends to hold as of next week on the question of Western Sahara, I should like, on behalf of my Government, to recall Algeria's steadfast position on the matter.

1. The question of Western Sahara is first and foremost a question of decolonization arising in the context of General Assembly resolution 1514 (XV), given that the General Assembly has since 1965 called for the decolonization of this territory and for the self-determination of its people through a referendum on self-determination (resolutions 2072 (XX) and 2229 (XXI)).

On 16 October 1975 the International Court of Justice issued an advisory opinion in which it ruled that "the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the territory".

In his opinion issued on 29 January 2002 (S/2002/161), the United Nations Legal Counsel stressed that Morocco was not an administering Power of the territory, that the 1975 Madrid Agreement had not transferred sovereignty over the territory to any of the signatories and that the status of Western Sahara as a Non-Self-Governing Territory had not been affected by that Agreement.

2. On the basis of the foregoing, it appears clear that the territory of Western Sahara is not a Moroccan province that has entered into conflict or is in dissent with the central Government and would be happy to be granted a fairly broad degree of autonomy, but a territory that has been illegally occupied since 1975 and has been included in the United Nations list of Non-Self-Governing Territories, and no legal falsehood or distortion of the facts will change this stubborn fact.

It is for this reason that Algeria has rejected the draft framework agreement proposed by the Kingdom of Morocco, which would offer, under Moroccan sovereignty, a form of pseudo-autonomy "to the residents of the territory".

Algeria will continue to do so, strenuously, because this is a case in which justice must be done on behalf of a people that seeks only to exercise its free and

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sovereign right to self-determination — in other words, to choose between independence and incorporation, as provided for in the referendum on self-determination that the United Nations has been trying to hold since 1991, pursuant to the Settlement Plan agreed by the parties and endorsed by the international community, which remains the most effective way of promoting a just and lasting solution to the conflict in Western Sahara.

3. Algeria, which will continue to give its full support to the efforts of the Secretary-General and his Personal Envoy to find a settlement to the question of Western Sahara in accordance with international law, considers that the Security Council must bear in mind that, under the terms of the Charter and the resolutions of the United Nations, it is the responsibility of the Organization to complete the process of decolonization in this territory, to let the people of Western Sahara choose their destiny freely and to ensure that international law and the principles of justice prevail over the policy of fait accompli and occupation of territory by force.

I should be grateful if you would arrange to have this letter circulated as a document of the Security Council.

(*Signed*) Abdallah **Baali**
Ambassador